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Fast Track Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-20-205
Regulation title	State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions
Action title	Premium Assistance Option under CHIPRA
Final agency action date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The sections of the State Plan for Medical Assistance affected by this action are Preprint Page 29d (12 VAC 30-10-325) and State Plan Under Title XIX of the Social Security Act Medical Assistance Program; Administration of Medical Assistance Services, Premium Assistance Option under CHIPRA (12 VAC 30-20-205).

This change is the result of language added to the 2010 Appropriations Act, Chapter 874 Item 296 L. which directed the Department of Medical Assistance Services (DMAS) to develop enrollment and retention provisions, consistent with those outlined in Section 104 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), P.L. 111-3, and implement provisions determined to be budget-neutral, cost-effective, or that would lead to an award of a CHIPRA performance bonus.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background document with the attached amended State Plan pages State Plan Under Title XIX of the Social Security Act Medical Assistance Program; are Preprint Page 29d (12 VAC 30-10-325) and Attachment 4.22-C: General Provisions: Premium Assistance Option under CHIPRA (12 VAC 30-10-325) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

Date

Gregg A. Pane, M.D., MPA, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, §§ 32.1-324 and 325, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This change is to put in place the language added to the 2010 Appropriations Act, Chapter 874 Item 296 L directing the DMAS to develop enrollment and retention provisions, consistent with those outlined in Section 104 of CHIPRA, and implement provisions determined to be budget-neutral, cost-effective, or that would lead to an award of a CHIPRA performance bonus.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The Agency is using the Fast-Track since this change is designed to save tax dollars and brings substantial additional federal money into the State. Using the Fast-Track process will get this regulation implemented as quickly as possible, as there was no emergency regulatory authority included in the General Assembly mandate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The Children's Health Insurance Program Reauthorization Act of 2009 authorizes the Centers for Medicare and Medicaid Services (CMS) to award annual financial bonuses to states that: 1) implement certain enrollment and retention provisions in their children's Medicaid and Children's Health Insurance Program (CHIP) programs and, 2) exceed enrollment goals in their children's Medicaid program. Funding for the annual CHIPRA performance bonus payments is available through federal fiscal year (FFY) 2013.

In order for the Department to ensure that Virginia is eligible for a CHIPRA performance bonus in FFY2011, two new enrollment and retention strategies must be implemented. One enrollment and retention strategy, Administrative Renewals, is being implemented to streamline the renewal process for current FAMIS enrollees. While this is a positive step forward for the Children's Health program, this provision alone will not secure a performance bonus for the Commonwealth. A second enrollment and retention strategy is needed to obtain this funding. Without significant expense and administrative changes, the Department can implement a section 1906(A) premium assistance program, and thereby qualify for federal performance bonuses for the next three years. Premium assistance programs use federal and State Medicaid funds to help subsidize the purchase of group health coverage for children who have access to employer-sponsored coverage, but who may need assistance in paying for their premiums.

Virginia currently operates a premium assistance program, known as the Health Insurance Premium Payment Program or HIPP, under the authority of Section 1906 of the Social Security Act. HIPP provides reimbursement for the Medicaid individual's share of the cost of the health

insurance premium, when it is cost-effective for the State to do so. The current HIPP program does not restrict enrollment to children under age 19, and opens enrollment up to most Medicaid eligible individuals covered under employer-sponsored health insurance.

CHIPRA added Section 1906(A) to the Social Security Act and provides states with an additional premium assistance option for children under age 19 enrolled in Medicaid. This new provision is intended to give States the opportunity to build on existing Section 1906 programs to augment coverage options for children.

The premium assistance option offered through CHIPRA allows States to provide health insurance premium assistance to children under age 19, who are eligible for Medicaid and who have access to qualified employer-sponsored coverage. The CHIPRA premium assistance provision would also require the Department to pay cost sharing for the ineligible parent who holds the insurance as well as for enrolled children under age 19. It is estimated that this will cost the Department approximately \$947,614 in total funds (\$446,326 in general funds) each year. Individual enrollment in the CHIPRA premium assistance program is voluntary and is not a condition of enrollment for those applying for Medicaid. This program will not require an administratively burdensome cost effectiveness calculation for each participant as is currently required in the HIPP program. Program guidelines require that cost-effectiveness will be met as long as the employer covers at least 40% of the health insurance premium. Implementation of this provision will provide an alternative method for subsidizing employer-sponsored coverage and will encourage parents of Medicaid children to enroll in private health insurance.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages of this action is that it will permit DMAS to extend the Health Insurance Premium Payment program to children, saving the State money and providing for private health insurance coverage for children. In addition, implementing this program qualifies Virginia for substantial extended federal match money, as set out below. There are no disadvantages to the Commonwealth or to the public.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

This action does not implement any requirements that are more restrictive than the federal requirement associated with this program.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by this action.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no adverse impact on small business. There are no alternative regulatory methods to accomplish the objectives. This program meets the rules established in § 1906A of the Social Security Act.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Implementing a § 1906A premium assistance program is the most cost-effective option for Virginia to qualify for a CHIPRA performance bonus. The total estimated general fund impact for FFY11 is \$585,107. The potential performance bonus that Virginia should be eligible to receive for FFY11 is \$32,489,174.</p> <p>The estimated cost of the premium assistance program in FFY12 is \$574,361 and in FFY13 is \$600,057. The projected performance bonus for FFY12 is \$43,678,761 and for FFY13 is \$59,252,052.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the</p>	<p>Families with Medicaid eligible children who have employer sponsored health insurance.</p>

regulation	
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The Department estimates that 1,186 families will be eligible for this new premium assistance program in FFY11.</p> <p>This provision does not directly affect small businesses; however employees of small businesses may be eligible for participation in this premium assistance program.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>None.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Department must implement two enrollment and retention strategies in order to qualify for the federal performance bonus. Implementing the § 1906A premium assistance program is one of the two least costly CHIPRA enrollment and retention strategies that the Department can implement in order to receive a CHIPRA performance bonus.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-10-325		Preprint page for Premiums, Deductibles, Coinsurance and Other Cost Sharing Obligations under section 1906 of the Social Security Act	Adds new text regarding Premiums, Deductibles, Coinsurance and Other Cost Sharing Obligations under section 1906(A) of the Social Security Act
None	12VAC30-20-205 Health Insurance Premium Payment Program for Kids	none	Includes new language to implement a new HIPP program to children under 19 years of age whose parents are not otherwise eligible for Medicaid. Includes a Definitions section and a Purpose section. The regulations describe the requirements for eligibility for the program for the Medicaid-eligible individual as well as the coverage for non-Medicaid eligible family members. The regulations also describe the application requirement, as well as the requirements for Qualified Employer-Sponsored Coverage. Other sections cover self-employment, payment, appeals, third-party liability and provider requirements.